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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,294	08/20/2003	John D. Anderson	0110357-029	6658

7590 07/14/2004  
Bell, Boyd & Lloyd LLC  
P.O. Box 1135  
Chicago, IL 60690-1135

EXAMINER

GUTMAN, HILARY L

ART UNIT	PAPER NUMBER
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3612

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/644,294	ANDERSON ET AL.	
	Examiner	Art Unit	
	Hilary Gutman	3612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25, 26 and 28-33 is/are allowed.
- 6) ☒ Claim(s) 1, 3, 5, 11, 16, 19, 23 and 24 is/are rejected.
- 7) ☒ Claim(s) 2, 4, 6-10, 12-15, 17, 18, 20-22 and 27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/17/03</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the pad of claims 4, 20, and 27; the at least one locking notch defined in the base and the locking pin extending from the movable expanding member of claim 12; and the pin attached to the expanding member and the locking receptacles formed in the base of claim 14 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference character(s) mentioned in the description: "90a to 90q" and also "90b to 90r".

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4. Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Specification*

5. The disclosure is objected to because of the following informalities: on page 2, line 29, "van" should be "vans". On page 11, line 18, "3 to 12" should be "4 to 12". On page 15, line 7, the abbreviations should be accompanied by the actual terms for clarity.

Appropriate correction is required.

6. The use of the trademark Pontiac vibe and Toyota matrix has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

*Claim Rejections - 35 USC § 102*

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 3, 5, 11, 16, 19, and 23-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Fahland.

Fahland (2,858,905) discloses an auto-rack railroad car supplemental restraint for an auto-rack railroad car having a primary restraint system for a vehicle T, the primary restraint system including a grating (generally 11) and a primary restraint B adapted to be releaseably attached to the grating, the supplemental restraint comprising: a body (Figure 7) adapted to be positioned on the grating (via the primary restraint) between a tire W of the vehicle T on the grating and the primary restraint, the body including a mounting member 31 and a tire engager (or surface 29) extending upward from the mounting member; and an expander 34, 35 connected to the body, the expander movable to a non-expanded position (when 34 engages an uppermost portion of slot 36) and at least one expanded position (when 34 engages a lower portion of slot), wherein the positioning of the expander in the expanded position is adapted to cause the tire engager to engage the tire and the expander to engage the primary restraint.

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With regard to claim 3, the mounting member 31 and the tire engager 29 are integrally formed.

With regard to claim 5, the expander 34, 35 includes a base (or upper portion) connected to the tire engager 29.

With regard to claim 11, the expander is movable to at least one partially expanded position.

For claim 16, Fahland discloses an auto-rack railroad car supplemental restraint for an auto-rack railroad car having a primary restraint system for a vehicle, the primary restraint system including a grating (11) and a primary restraint B adapted to be releaseably attached to the grating, the supplemental restraint comprising: a body (Figure 7) adapted to be positioned on the grating between a tire W of the vehicle T and the primary restraint B, the body including a mounting member 31 and a tire engager 29 extending upwardly from the mounting member; and expanding means 34, 35 for causing the tire engager to engage the tire, the expanding means movable between a non-expanded position and an expanded position (shown in Figure 3), wherein the movement between the non-expanded position and the expanded position is adapted to cause the tire engager to securely engage the tire and the expanding member to engage the primary restraint.

With regard to claim 19, the mounting member and the tire engager are integrally formed.

With regard to claim 23, the expanding means includes a guide mechanism 36.

With regard to claim 24, the expander includes at least one partially expanded position.

*Allowable Subject Matter*

9. Claims 25-26 and 28-33 are allowed.
10. Claims 2, 4, 6-10, 12-15, 17-18, 20-22, and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 703-305-0496.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 703-308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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13. **Any response to this action should be mailed to:**

Assistant Commissioner for Patents

Washington, D.C. 20231

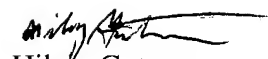
**or faxed to:**

(703) 872-9326, (for formal communications intended for entry)

**or:**

(703) 746-3515, (for informal or draft communications, please clearly label

"PROPOSED" or "DRAFT").

  
Hilary Gutman

July 7, 2004